

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs September 12, 2000

**STATE OF TENNESSEE v. FARON DOUGLAS PIERCE**

**Direct Appeal from the Circuit Court for Blount County**  
**No. C-10992     D. Kelly Thomas, Jr., Judge**

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**No. E1999-02210-CCA-R3-CD**  
**November 15, 2000**

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The defendant, Faron Douglas Pierce, was convicted of one count of aggravated robbery. See Tenn. Code Ann. § 39-13-402. The trial court imposed a Range II sentence of 20 years in the Tennessee Department of Correction. In this appeal as of right, the defendant challenges the sufficiency of the evidence and contends that his sentence is excessive. Because the evidence is sufficient and because the defendant has failed to demonstrate that his sentence is excessive, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3; Judgment of the Trial Court Affirmed.**

GARY R. WADE, P.J., delivered the opinion of the court, in which DAVID G. HAYES and THOMAS T. WOODALL, JJ., joined.

Charles Deas, Maryville, Tennessee, for the appellant, Faron Douglas Pierce.

Paul G. Summers, Attorney General & Reporter, Mark A. Fulks, Assistant Attorney General, and William Reed, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

On the evening of October 25, 1996, the victim, Joseph Wayne Howe, was working at a Pilot convenience store located on West Broadway in Maryville, Tennessee. At approximately 9:30 p.m., two men wearing bandannas tied over their faces and armed with butcher knives entered the store. One of the men was wearing a red bandanna and a jacket in the team colors of the Washington Redskins; the other was wearing a blue bandanna and a dark jacket. The victim was the only employee in the store.

Wielding a 10-inch butcher knife, the robber in the blue bandanna demanded "all [the victim's] money." When the victim opened the cash drawer, the robber in the blue bandanna "took the whole till out of the register." He then demanded that the victim open the safe. When the safe was opened, the robber pushed the victim aside and removed the money, which consisted of change.

The robber next demanded that the victim open the "hard side" of the safe. Although the victim was unable to open the "hard side," he saw an opportunity to disarm the robber and initiated a struggle.

When the robber in the blue bandanna prevailed in the scuffle, he ordered the victim to lie down behind the register. The victim refused and was escorted at knife point to the store's office. Each of the robbers then struck the victim in the face. When the robber in the red bandanna left the office, the victim ran out of the store's front door and into the street, shouting for help. At that point, the victim saw a "light-green colored square-looking car" being driven to the front of the store. The two robbers got into the car and it sped away. The victim was unable to discern whether the driver of the car was male or female. Ultimately, the victim determined that the robbers had stolen cigarettes, money, checks, and credit card receipts.

After leaving the convenience store, the robbers fled to Mynders Avenue, approximately one mile away from the scene of the robbery. Jonathan Earl Hendricks, Sr., who was standing on the front porch of his residence, which is located on a dead-end street, saw the robbers' vehicle being driven at a high rate of speed. The vehicle turned around, proceeded back up the street, and entered the driveway at a residence next door to Hendricks, striking the bumper of a vehicle already in the driveway. When the vehicle was stopped, Hendricks saw two men and one woman inside. The vehicle was then quickly backed onto the street, where it struck a mailbox and came to rest in a ditch. The occupants remained inside the vehicle and Hendricks went to call the police from a pay phone. Upon his return, he saw several of his neighbors attempting to remove the vehicle from the ditch. The two male occupants of the vehicle ran toward the house next door, while the female occupant remained with the vehicle. Hendricks was able to identify one of the males, Ricky McBee, but did not know either the female or the other male, whom Hendricks described as wearing a dark leather or vinyl-type jacket.

Officer Eddie Davis of the Maryville Police Department was dispatched to the crime scene. Approximately 15 to 20 minutes after his arrival at the store, the officer was directed to investigate the traffic accident on the dead-end street. When he arrived at the scene of the accident, he observed that the vehicle in the ditch matched both the description and the license tag number of the robbery vehicle. Officer Davis ascertained that the vehicle belonged to Dawn Webb, who was standing in the yard of the house next door to Hendricks. After backup officers arrived, Officer Davis and Detective David Graves entered the house to search for suspects. A white male, Ricky McBee, was lying on a bed in the back bedroom. The defendant was discovered hiding under the same bed. McBee and the defendant were then taken to the Pilot for identification by the victim. Because McBee's red bandanna had fallen off during the robbery, the victim was able to make a positive identification. The victim was unable to identify the defendant.

Although no identifiable fingerprints were obtained from the crime scene, a large quantity of physical evidence was found at the house in which McBee and the defendant were discovered. Pilot receipts, coupons, checks made payable to Pilot, and coin wrappers were found in the driveway of the residence. Police found a brown vinyl jacket and a butcher knife on the porch. The jacket contained \$22.50 in rolled coins and a cigarette lighter. A red and yellow jacket similar to a Washington Redskins jacket was found in the same back bedroom as McBee and the defendant.

Three cartons of Marlboro cigarettes, another butcher knife, and two rolls of pennies were in the suspect vehicle. Five packs of Marlboro cigarettes were recovered from Webb's purse.

When the defendant was searched at the police station, \$397.86, most of which was change, was found on his person. The bills were "wadded up," but were sorted by denomination. Police also recovered a Pilot receipt mixed in with the currency in the defendant's pocket. A Pilot customer, Margaret Thurman, identified the receipt as one which she had signed earlier during the day when purchasing gasoline.

## I

Initially, the defendant challenges the sufficiency of the evidence. He contends that because the victim could not positively identify him, and because the police were unable to find fingerprints at the scene of the crime, the evidence is insufficient for a reasonable jury to find him guilty of aggravated robbery beyond a reasonable doubt. We disagree.

On appeal, the state is entitled to the strongest legitimate view of the evidence and all inferences which might be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). The credibility of the witnesses, the weight to be given their testimony, and the reconciliation of conflicts in the evidence are matters entrusted exclusively to the jury as the trier of fact. Byrge v. State, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978). The relevant question is whether, after reviewing the evidence in the light most favorable to the state, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Tenn. R. App. P. 13(e); State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983). This court may neither reweigh nor reevaluate the evidence; nor may this court substitute its inferences for those drawn by the trier of fact. Liakas v. State, 199 Tenn. 298, 286 S.W.2d 856, 859 (1956). The evidence is sufficient when a rational trier of fact could conclude that the defendant is guilty beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319 (1979). The defendant has the burden of demonstrating that the evidence is not sufficient when there is a challenge to the sufficiency of the evidence. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

An offense may be proven by circumstantial evidence alone. Price v. State, 589 S.W.2d 929, 931 (Tenn. Crim. App. 1979). Our scope of review is the same when the conviction is based upon circumstantial evidence as it is when it is based upon direct evidence. State v. Brown, 551 S.W.2d 329, 331 (Tenn. 1977); Farmer v. State, 208 Tenn. 75, 343 S.W.2d 895, 897 (1961).

Where the evidence is entirely circumstantial, the jury must find that the proof is not only consistent with the guilt of the accused but inconsistent with his innocence. There must be an evidentiary basis upon which the jury can exclude every other reasonable theory or hypothesis except that of guilt. Pruitt v. State, 3 Tenn. Crim. App. 256, 460 S.W.2d 385, 390 (1970). Like all other fact questions, the determination of whether all reasonable theories or hypotheses are excluded by the evidence is primarily a jury question. Marable v. State, 203 Tenn. 440, 313 S.W.2d 451, 457 (1958); State v. Tharpe, 726 S.W.2d 896, 900 (Tenn. 1987).

Robbery is statutorily defined as "the intentional or knowing theft of property from the person of another by violence or putting the person in fear." Tenn. Code Ann. § 39-13-401(a). Aggravated robbery is robbery that is:

- (1) Accomplished with a deadly weapon or by display of any article used or fashioned to lead the victim to reasonably believe it to be a deadly weapon; or
- (2) Where the victim suffers serious bodily injury.

Tenn. Code Ann. § 39-13-402(a).

Although the evidence in this case was purely circumstantial, it was sufficient to support the finding that the defendant was guilty of aggravated robbery. The defendant argues that his identity as the second robber was not established. He was discovered, however, hiding under a bed in the same bedroom in which McBee, who was positively identified as one of the two robbers, was hiding. Two jackets matching the victim's description of those worn by the robbers were at the house where McBee and the defendant were found. Two butcher knives were in the area: one on the front porch of the house in which the defendant was discovered and one in the vehicle which was stranded in the ditch. The \$397.86 in possession of the defendant consisted of 51 pennies, 46 nickels, 58 dimes, 33 quarters, 51 one-dollar bills, 22 five-dollar bills, 14 ten-dollar bills, and four twenty-dollar bills, with the bills sorted by denomination, such as would have come out of the Pilot register. Finally, a witness testified that the receipt in the possession of the defendant was one that she had signed at the Pilot while purchasing gasoline earlier on the day of the robbery. From all of this, it is our conclusion that the evidence was sufficient.

## II

Next, the defendant asserts that his sentence is excessive, "that more weight should have been given to the fact that his earlier felony record was some nine years old," and that "[a] sentence in the middle of the range would have been more appropriate." He fails, however, to provide this court with any further argument, any citation to authorities, or any references to the record. Technically, this issue has been waived. See Tenn. R. Ct. Crim. App. 10(b). Nevertheless, the record supports the sentence.

When there is a challenge to the length, range, or manner of service of a sentence, it is the duty of this court to conduct a de novo review with a presumption that the determinations made by the trial court are correct. Tenn. Code Ann. § 40-35-401(d). This presumption is "conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances." State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991); see State v. Jones, 883 S.W.2d 597, 600 (Tenn. 1994). "If the trial court applies inappropriate factors or otherwise fails to follow the 1989 Sentencing Act, the presumption of correctness falls." State v. Shelton, 854 S.W.2d 116, 123 (Tenn. Crim. App. 1992). The Sentencing Commission Comments provide that the burden is on the defendant to show the impropriety of the sentence. Tenn. Code Ann. § 40-35-401, Sentencing Commission Comments.

Our review requires an analysis of (1) the evidence, if any, received at the trial and sentencing hearing; (2) the presentence report; (3) the principles of sentencing and the arguments of counsel relative to sentencing alternatives; (4) the nature and characteristics of the offense; (5) any mitigating or enhancing factors; (6) any statements made by the defendant in his own behalf; and (7) the defendant's potential for rehabilitation or treatment. Tenn. Code Ann. §§ 40-35-102, -103, -210; State v. Smith, 735 S.W.2d 859, 863 (Tenn. Crim. App. 1987).

In calculating the sentence for a Class B, C, D, or E felony conviction, the presumptive sentence is the minimum in the range if there are no enhancement or mitigating factors. Tenn. Code Ann. § 40-35-210(c). If there are enhancement but no mitigating factors, the trial court may set the sentence above the minimum, but still within the range. Tenn. Code Ann. § 40-35-210(d). A sentence involving both enhancement and mitigating factors requires an assignment of relative weight for the enhancement factors as a means of increasing the sentence. Tenn. Code Ann. § 40-35-210(e). The sentence must then be reduced within the range by any weight assigned to the mitigating factors present. Id.

Aggravated robbery is a Class B felony. Tenn. Code Ann. § 39-13-402(b). A Range II sentence for a Class B felony is not less than 12 nor more than 20 years. Tenn. Code Ann. § 40-35-112(b)(2).

In this case, the trial court found three enhancement factors: that the defendant has a history of criminal convictions in addition to those necessary to establish the appropriate range; that the defendant has a previous history of unwillingness to comply with conditions of release in the community; and that the defendant has juvenile convictions that would have been felonies had he been tried as an adult. See Tenn. Code Ann. § 40-35-114(1), (8), (20). The trial court determined that there were no applicable mitigating factors. The defendant does not contend that the enhancement factors found by the trial court are inappropriate. Nor does he suggest any mitigating factors that should have been applied by the trial court. Although the defendant was sentenced to the maximum term in the range, 20 years, the defendant has, in our view, failed to show that his sentence is improper. The defendant's criminal history is extensive. The three enhancement factors applied by the trial court, combined with the lack of mitigating circumstances, support the trial court's sentence.

Accordingly, the judgment of the trial court is affirmed.

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GARY R. WADE, PRESIDING JUDGE